

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 06-10352-RWZ

HONGGE BAPTISTA

v.

NEW BEDFORD CREDIT UNION and
MARIA TAVARES

MEMORANDUM OF DECISION

May 8, 2007

ZOBEL, D.J.

I. Background

Plaintiff Hongge Baptista (“Baptista”) a former bookkeeping assistant at the New Bedford Credit Union (“Credit Union”), brings this action against her former employer and her former supervisor, Maria Tavares (“Tavares”), alleging gender discrimination in violation of Title VII, 42 U.S.C. §§ 2000(e) et seq. Specifically, she alleges that she was subjected to a hostile work environment and ultimately terminated because of her pregnancy.

Defendants Credit Union and Tavares now jointly move for summary judgment (Docket # 14) pursuant to Fed. R. Civ. P. 56, with a memorandum in support thereof (Docket # 15).

II. Discussion

A. Defendant Tavares

Tavares is not subject to individual liability under Title VII. See Healy v. Henderson, 275 F. Supp. 2d 40, 45 & n. 39 (D. Mass. 2003) (collecting cases) (“Congress did not intend to impose individual liability upon agents of an employer”).

B. Defendant Credit Union

With respect to the Credit Union, plaintiff argues that Tavares had input into the decision to fire plaintiff and that the decision was motivated by discriminatory animus. Defendant Credit Union disputes both contentions. It contends that plaintiff's performance evaluations were average or below average. Defendant further says that the decision to fire plaintiff was made by the CEO of the Credit Union, Dennis C. Brightman (“Brightman”), who neither himself discriminated against plaintiff, nor terminated her on the basis of her pregnancy.

While Tavares' conduct may not give rise to her individual liability, see Healy, supra, as a supervisor, Tavares' conduct may nonetheless be imputed to her employer and thereby provide the basis for her employer's liability. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (employer may be subject to vicarious liability for hostile work environment created by supervisor).

There is an issue of fact as to whether, and to what extent, Tavares influenced Brightman's decision to terminate plaintiff and whether her actions were motivated by discriminatory intent. In his affidavit, Brightman stated that he had the sole authority to both hire and fire plaintiff. (Docket # 17-1, Aff. of Dennis C. Brightman in Supp. of Mot. for Summ. J. ¶ 3.) However, by implication, he also stated that Tavares had input into the decision. See id. ¶ 10 (“In June 2004, Tavares . . . came to me and said that, after

her automobile accident on March 17, 2004, Baptista's work performance and attitude had deteriorated and that [Baptista] was disrespectful to [Tavares]."); see also ¶¶ 11-15. That is, that Tavares could not hire and fire plaintiff is not an absolute defense to the employer's liability for Tavares' actions. Because there is an issue of fact as to those actions, summary judgment is inappropriate as to the Credit Union.

III. Conclusion

Defendants' Motion for Summary Judgment (Docket # 14) is ALLOWED as to defendant Tavares and DENIED as to defendant Credit Union.

May 8, 2007

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE